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Dated: July 5, 2006

Signature: _____

(Karl R. Blum)

Docket No.: F1866.0058

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Naoyuki Kouyama

Application No.: 09/804,570

Confirmation No.: 8885

Filed: March 12, 2001

Art Unit: 2618

For: FOLDABLE PORTABLE TELEPHONE SET

Examiner: P. N. Tran

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under § 41.37(a), this brief is filed within three months of the Notice of Appeal filed in this case on April 5, 2006, and is in furtherance of said Notice of Appeal.

The fee of \$500.00 required under Section 1.17(f) is submitted herewith. You are hereby authorized to charge our credit card (PTO Form 2038 is attached).

In the event a fee is required or if any additional fee during the prosecution of this application is not paid, the Patent Office is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 50-2215.

CONTINGENT EXTENSION REQUEST

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If this communication is filed after the shortened statutory time period had elapsed and no separate Petition is enclosed, the Commissioner of Patents and Trademarks is petitioned, under 37 CFR 1.136(a), to extend the time for filing a response to the outstanding Office Action by the number of months which will avoid abandonment under 37 CFR 1.135. The fee under 37 CFR 1.17 should be charged to our Deposit Account No. 50-2215.

This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1206:

- I. Real Party In Interest
- II Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Argument
- VIII. Claims
- IX. Evidence
- X. Related Proceedings
- Appendix A Claims

I. REAL PARTY IN INTEREST

The real party in interest for this appeal is:

NEC Corp.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

A. Total Number of Claims in Application

There are 17 claims pending in application.

B. Current Status of Claims

1. Claims canceled: None
2. Claims withdrawn from consideration but not canceled: 5, 6, 9, 14, 16, and 17
3. Claims pending: 1-4, 7, 8, 10-13, and 15
4. Claims allowed: None
5. Claims rejected: 1-4, 7, 8, 10-13, and 15

C. Claims On Appeal

The claims on appeal are claims 1-4, 7, 8, 10-13, and 15

IV. STATUS OF AMENDMENTS

Appellant filed an Amendment after a first Office Action mailed July 15, 2004. This Amendment was filed September 8, 2004. The Examiner entered this Amendment and issued a second non-final Office Action. No further amendments were made to the pending claims. Appellant filed a Response After Final Rejection on December 28, 2005. The Examiner responded to the Response After Final Rejection in an Advisory Action mailed March 21, 2006. In the Advisory Action, the Examiner indicated that Appellant's request for reconsideration was considered but did not place the case in condition for allowance.

Accordingly, the claims enclosed herein as Section VIII incorporate the amendments indicated in the paper filed by Applicant on September 8, 2004.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claims 1-4, 7-8, 10-13 and 15 are pending in the present application. Of those, claims 1-4, 10, and 11 are independent. The claims relate to a foldable portable telephone and more particularly, to a method and system of call tone output in a foldable portable telephone. Appellant will address each independent claim below. Elements included in multiple claims will typically only be addressed the first time they appear.

A. Independent Claim 1

Independent claim 1 recites:

1. A call tone output system for a foldable portable telephone set having a hinge for being unfolded and folded, comprising:

a detector for detecting the unfolding and folding of the hinge; and

a tone output controller that causes tone output from a call tone output unit upon a call arrival when the hinge is in a folded state, and causes tone output from a receiver when the hinge is unfolded from the folded state.

Figures 1 and 2 disclose a portable telephone having a first casing 1 and a second casing 2 connected by a hinge 3. The portable telephone further includes a detector for detecting the unfolding and folding of the hinge and a tone controller that causes tone output for the tone output unit and the receiver depending upon the state of the foldable telephone.

The detector is shown in Figure 3 and discussed on page 11 of the present specification. An example of the detector is lead switch 14. Lead switch 14 checks whether the casings 1 and 2 of the portable telephone are in the folded or unfolded states via the hinge 3. The detector provides a detection signal to switch controller 20. Switch controller 20 controls switches 12, 18, 13, and 16 that are used to control tone output unit 8 and receiver 5.

In one embodiment, receiver 5, which is a loudspeaker, is situated on a first foldable portion of the portable telephone that faces the second foldable member when the portable telephone is in the folded position. See, Fig. 1. In other words, receiver 5 is disposed inside the telephone when the telephone is in the folded state. See, Fig. 2. The portable telephone also includes a call tone output unit 8 disposed on the outer surface of the portable telephone when the telephone is in the folded state. The call tone output unit 8 includes a loudspeaker. It should be noted that call tone output unit 8 and receiver 5 are on opposite sides of the portable telephone when the portable telephone is in the unfolded state. See, specification at 5, lines 1-20; Fig. 1; Fig. 2.

A tone controller, e.g. switch controller 20, causes tone output from a call tone output unit 8 when the telephone is in the folded state and the tone output controller causes tone output from receiver 5 when the telephone goes from the folded to unfolded state. This condition is disclosed in Figure 7 and discussed in the specification with respect to routine 1. See, page 12, lines 3-11; page 13, lines 7-16; Figure 7. Specifically, when switch 14 determines that hinge 3 is in the folded state, switch controller 20 turns switch 13 on so that a tone signal is presented to amplifier 15. Additionally, switch 16 is turned on such that amplifier 15 is powered. Thus, when a call arrives, a call tone is output from the call tone output unit 8 on the outer surface of the

folded telephone¹. Likewise, when the hinge 3 is brought from the folded state to the unfolded state, switch 14 is turned off. In response to switch 14 turning off, switch controller 20 controls bus switch 12 to couple the output of the call tone generator 11 to the receiver 5. Additionally, switch 18 is turned on such that amplifier 17 connected to receiver 5, is turned on. See, pg 13, ln. 7, et seq.²

B. Independent Claim 2

Independent claim 2 recites:

2. A call tone output system for a foldable portable telephone set having a hinge for being unfolded and folded, comprising:

a detector for detecting the unfolding and folding of the hinge; and

a tone output controller that causes tone output from a call tone output unit upon a call arrival and causes tone output from a receiver when the hinge is unfolded from a folded state.

Claim 2 is similar to claim 1 in that it is directed to a call tone output system for a portable foldable portable telephone set having a hinge for being unfolded and folded and a detector for detecting the unfolding and folding of the hinge. Claim 2 differs from claim 1 in that the tone output controller causes tone output from a call tone output unit upon call arrival regardless of the state of the hinge.

As shown in Figure 4, when a call arrives (step S12, S16), a tone is generated from call tone output unit 8 (step S13, S17). See, specification at page 11, line 26 - page 12, line 2; page 14, lines 13-21.

¹ As shown in Fig. 7, the output status of receiver 5 is arbitrary (i.e., can be outputting or be silent) when call tone output unit 8 is active.

C. Independent Claim 3

Independent claim 3 recites:

3. A call tone output system for a foldable portable telephone set having a hinge for being unfolded and folded, comprising:

a detector for detecting the unfolding and folding of the hinge; and

a tone output controller that causes tone output from a call tone output unit upon a call arrival, when the hinge is in a folded state, an unfolded state, or when the hinge is folded from the unfolded state, and that causes tone output from a receiver when the hinge is unfolded from the folded state.

All of the limitations of claim 3 were discussed with reference to independent claim 1 except for a tone controller that causes tone output from a tone output unit upon a call arrival when the hinge is in a folded state, an unfolded state, or when the hinge is folded from the unfolded state.

As shown in Figure 7, when the telephone is unfolded, the tone output part is tone output unit 8, referred to as routine 2 in Figure 4. When the hinge is in a folded state, the tone output part is the call tone output part 8 referred to as routine 1 in Figure 4. It should be noted that subroutines 1 and 2 are discussed in the specification at pages 11-15.

D. Independent Claim 4

Independent claim 4 recites:

² As shown in Fig. 7, the output status of call tone output unit 8 is arbitrary when receiver 5 is active.

4. A call tone output system for a foldable portable telephone set having a hinge for being unfolded and folded, comprising:

a detector for detecting the unfolding and folding of the hinge; and

a tone output controller that causes tone output from a call tone output unit upon a call arrival when the hinge is in a folded state, an unfolded state, or folded from the unfolded state and that causes tone output from a receiver when the hinge is unfolded from the folded state or when the hinge is folded from the unfolded state.

All of the limitations in independent claim 4 are addressed with respect to at least claims 1 and 3 except that “a tone controller ... that causes tone output from a receiver when a hinge is unfolded from the folded state or when the hinge is folded from the unfolded state.”

Claim 4 is directed to the condition when the hinge is unfolded from the folded state or folded from the unfolded state. When either of these conditions exists, receiver 5 outputs a tone. As shown in Figure 7, when the telephone changes from the folded to unfolded state, receiver 5 is the tone output part. See, Fig 7; pg 13 ln 7, et seq.; pg 16 ln 4, et seq. When the telephone changes from the unfolded to folded state shown in routine 3, the tone output from receiver 5 is arbitrary (i.e., can be output or can be silent). As discussed in the specification, when the switch controller 20 detects that the hinge 3 has been folded, the tone output from the receiver 5 is optional. Id.

E. Independent Claim 10

Independent claim 10 recites:

10. A call tone output method for a foldable portable telephone set having a hinge to be unfolded and folded, comprising:

detecting the unfolding and folding of the hinge; and
outputting a call tone from a call tone output unit when a call arrives and the hinge is in a folded state; and
outputting a reception tone from a receiver when a call arrives and the hinge is unfolded from the folded state.

Claim 10 is directed to a foldable portable telephone set having a hinge to be unfolded and folded. The apparatus for which this method applied was originally discussed with respect to at least claim 1 above.

The method comprises detecting the unfolding and folding of the hinge. Detecting the unfolding and folding of the hinge is disclosed in the specification at page 11, at least at lines 6-12. Lead switch 14 checks whether the casings 1 and 2 of the foldable portable telephone set is unfolded or folded via the hinge 3 and feeds out a detection signal as a result of the check to the switch controller 20. It should be noted that lead switch 14 is not the only means for checking the folding and unfolding of the portable telephone. See, page 11, lines 3-12. When a call arrives, switch controller 20 turns on switches 3 and 16, whereby the tone signal generator 11 causes tone output from the call tone unit 8. See, page 11, line 26, et seq.; Figure 4 S13. Further, when the hinge is unfolded from the folded state, a reception tone is output from the receiver. See, Figure 7. Specifically, when the hinge 3 is brought from the folded state to the unfolded state, switch controller 20 recognizes the switch state change of lead switch 14 and controls switch 12 so as to couple the output of the call tone generator 11 to receiver 5. Simultaneously, switch 18 is turned on to cause current through the loudspeaker drive amplifier 17. See, page 13, lines 7, et seq.; Figure 7.

F. Independent Claim 11

Independent claim 11 recites:

11. A portable telephone set having two member bodies capable of being unfolded and folded, comprising:
 - a detector for detecting the unfolding and folding of the two member bodies; and
 - a tone output controller that causes tone output from a call tone output unit upon a call arrival when the two member bodies are in a folded state, and that causes tone output from a receiver upon a call arrival when the two member bodies are unfolded from the folded state.

Figures 1 and 2 disclose a portable telephone having a first side 1 and a second side 2 connected by hinge 3. The portable telephone further includes a detector for detecting the unfolding and folding of the hinge and a tone controller that causes tone output for the tone output unit and the receiver depending upon the state of the foldable telephone.

A tone controller causes tone output from a call tone output unit 8 when the telephone is in the folded state and the tone output controller causes tone output from receiver 5 when the telephone goes from the folded to unfolded state. This condition is shown in Figure 7 and discussed in the specification with respect to routine 1. See, page 12, lines 3-11; page 13, lines 7-16; Figure 7. Specifically, when switch 14 determines that hinge 3 is in the folded state, switch controller 20 turns on switch 13. Additionally, switch 16 is also on such that amplifier 15 is in the on state. Thus, when a call arrives, a call tone is output from the call tone output unit 8 on the outer surface of the folded telephone. Likewise, when the first and second sides of the telephone are brought from the folded state to the unfolded state, switch 14 is turned off. In response to switch 14 turning off, switch controller 20 controls bus switch 12 to couple the output

of the call tone generator 11 to the receiver 5. Additionally, switch 18 is turned on such that amplifier 17 is turned on.

As shown in Figure 7, when the telephone is unfolded, the tone output part is tone output unit 8, referred to as routine 2 in Figure 4. When the hinge is in a folded state, the tone output part is the call tone output part 8 referred to as routine 1 in Figure 4. It should be noted that subroutines 1 and 2 are discussed in the specification at pages 11-15.

VI. GROUNDS OF OBJECTION TO BE REVIEWED ON APPEAL

A. The rejection of claims 7, 8, 13, and 15 Under 35 U.S.C. § 112, second paragraph is being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

B. The rejection of claims 1-4, 7-8, 10-13, and 15 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,094,565 ("Alberth").

VII. ARGUMENT

Claims 1-17 are pending in the present application. Claims 5-6, 9, 14 and 16-17 have been withdrawn from consideration. Claims 7-8, 13 and 15 were finally rejected under 35 U.S.C § 112, second paragraph. Claims 1-4, 7, 8, 10-13 and 15 were finally rejected under 35 U.S.C § 102(e) over U.S. Pat. No. 6,094,565 ("Alberth"). The Board is respectfully requested to review and reverse the Examiner's rejections.

A. Claims 7, 8, 13, and 15 are not indefinite under 35 U.S.C. § 112, second paragraph.

In the Final Office Action, the Examiner asked if "the tone controller cause[s] tone output from both the receiver and tone output unit at the same time when an

incoming call arrived and/or depending on the detection of the hinge.” Claims 7 and 13 recite that “the tone output controller causes tone output from the receiver at the time of the tone output from the call tone output unit.” Claims 8 and 15 recite that “the tone output controller causes tone output from the call tone output unit at the time of the tone output from the receiver.” Claims 7, 8, 13 and 15 are drawn to an embodiment of the present invention wherein tone is output simultaneously from the receiver and the tone output unit. Applicant respectfully submits that the language in claims 7, 8, 13 and 15 is definite and need not be amended.

As shown in Fig. 7, when the telephone is in the folded state, having a tone output from receiver 5 is arbitrary. Claim 1 recites that when the telephone is folded, tone output unit 8 outputs a tone and when the telephone transitions from the folded state to the unfolded state a tone is output from the receiver 5. In each of these fold states, the output status of the output device not explicitly addressed in claim 1 is arbitrary as set forth at least in Fig. 7.

Claims 7 and 8 further limit their base claims. Specifically, claim 7 adds the limitation that the receiver 5 outputs a tone when the call tone output unit 8 outputs a tone. Claim 8 adds the limitation that call tone output unit 8 outputs a tone when receiver 5 outputs a tone.

Similarly, claims 13 and 15 are dependent on claims 3 and 4 respectively. Claim 13 and 15 contain the same language, respectively, as claims 7 and 8 as discussed above. None of the limitations in claims 3 and 4 prevent any dependent claim from causing tone output from the receiver and the tone output unit at the same time, regardless. Claims 3 and 4 set forth a first condition and claims 13 and 15 merely address the output device not specified in the independent claims.

Appellant respectfully submits that Figure 7 of the specification describes a preferred embodiment of the claimed invention showing that both tone output parts can be active in any hinge state. None of the claims 7, 8, 13, or 15 are dependent on the state of the hinge, they are only dependent on the state of the other output device. The Advisory Action asserted that unclaimed limitations were argued in response to the rejection. Appellant submits that all of the argued features are claimed, as discussed above. Appellant respectfully submits that the language of these claims is definite as currently written. Therefore, withdrawal of the rejection of claims 7, 8, 13 and 15 under Section 112, second paragraph, is respectfully requested.

B. Claims 1-4, 7, 8, 10-13, and 15 are not anticipated by Alberth.

Claims 1-4, 7, 8, 10-13 and 15 were improperly rejected under 35 U.S.C § 102(b) over Alberth.

Each of independent claims 1-4 and 11 explicitly recite a tone output controller, a call tone output unit, and a receiver. Additionally, each of these independent claims recites explicit tone output conditions upon a call arrival not present in Alberth.

As discussed above, the foldable portable telephone has two sound output devices for notifying a user when there is an incoming telephone call. The first output device is the call tone output unit 8 situated on the outside of the foldable portable telephone. The second output device is the receiver 5 situated on the inside of the foldable telephone.

In contrast, Alberth discloses a ringer 309 that is driven by controller 304 to sound an audible alert according to a predetermined tone pattern. The device in Alberth provides other call notification means including a vibrator 310 and ring indicator 204.

However, Alberth fails to disclose the two distinct means for providing tone output upon call arrival as explicitly recited in Applicants' independent claims. Therefore, claims 1-4 and 11 are not anticipated by Alberth.

Additionally, claims 1, 2, 3 and 4 each explicitly recite that "upon a call arrival" a tone output controller causes tone output from either a call tone output unit or a receiver "when the hinge is unfolded from the folded state." Applicant respectfully submits that this feature of the present invention is neither taught nor suggested by Alberth.

On page 3 of the Final Office Action, the Examiner asserts that the claimed limitation is disclosed at column 5, lines 24-43 and column 7, lines 8-12 in Alberth. Applicant respectfully disagrees. The cited sections in Alberth merely disclose that "[i]f a call is incoming, the controller 304 activates the ringer 309, the vibrator 310, or the indicator 204 to alert a user to the incoming call," and that "[i]f a call to the device 102 is incoming while the housing 105 is in the closed position 200, the controller 304 activates the ringer 309, the vibrator 310, or the indicator 204 to alert a user to the incoming call." However, Alberth is completely silent as to what action is taken "upon a call arrival" "**when** the hinge is unfolded from the folded state," as explicitly recited in Applicant's claims 1, 2, 3 and 4. (Emphasis added).

As discussed above, the cited portions of Alberth, namely column 5, lines 24-43 and column 7, lines 8-12, are completely silent with regards to what takes place "when the hinge is unfolded from the folded state" "upon a call arrival." Where Alberth discloses detecting the state of the hinge, the outcome of this detection is completely different from Applicant's claimed invention. For example, in column 7, lines 47-49, Alberth discloses answering the incoming call if the housing has been moved. Another example, in column 7, line 62 to column 8, line 10, Alberth discloses displaying the

caller's identification information if the housing is moved while one of the side buttons is actuated. These outcomes are different from Applicant's claimed invention.

Therefore, withdrawal of the rejection of claims 1, 2, 3 and 4 over Alberth is respectfully requested.

Claims 7 and 8 are dependent on and include all of the limitations of claim 1. All of the arguments regarding claim 1 apply with equal force to claims 7 and 8. Therefore, withdrawal of the rejection of claims 7 and 8 over Alberth is respectfully requested.

Claim 13 and 15 are dependent on and include all of the limitations of claims 3 and 4 respectively. All of the arguments regarding claim 3 and 4 apply with equal force to claims 13 and 15 respectively. Therefore, withdrawal of the rejection of claim 13 over Alberth is respectfully requested.

Independent claim 10 explicitly recites "outputting a reception tone from a receiver when a call arrives and the hinge is unfolded from the folded state." Independent claim 11 explicitly recites a tone output controller "that causes tone output from a receiver **upon a call arrival** when the two member bodies are unfolded from the folded state." (emphasis added). Applicant respectfully submits that the features recited in claims 10 and 11 are neither taught nor suggested by Alberth.

On page 3 of the Office Action, it is argued that these features are disclosed in column 5, lines 24-43 and column 7, lines 8-12 in Alberth. However, as discussed above, the cited section in Alberth merely discloses that "if a call to the device 102 is incoming while the housing 105 is in the closed position 200, the controller 304 activates the ringer 309, the vibrator 310, or the indicator 204 to alert a user to the incoming call." Controller 304 in Alberth does not output "a reception tone **from a**

receiver when a call arrives and the hinge is unfolded from the folded state,” as explicitly recited in Applicant’s claim 10. (Emphasis added) Also, Controller 304 in Alberth does not cause “tone output **from a receiver** upon a call arrival when the two member bodies are unfolded from the folded state,” as explicitly recited in Applicant’s claim 11. (Emphasis added) Therefore, withdrawal of the rejection of claims 10 and 11 over Alberth is respectfully requested.

Claim 12 is dependent on and include all of the limitations of claim 11. Therefore, all of the arguments regarding claim 11 apply with equal force to claim 12. Therefore, withdrawal of the rejection of claim 12 over Alberth is respectfully requested.

VIII. CLAIMS

A copy of the claims involved in the present appeal is attached hereto as Appendix A. As indicated above, the claims in Appendix A do include the amendments filed by Applicant on September 8, 2004, and do not include the amendment(s) filed on December 28, 2005.

IX. EVIDENCE

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or entered by or relied upon by the examiner is being submitted.

X. RELATED PROCEEDINGS

No related proceedings are referenced in II. above, or copies of decisions in related proceedings are not provided, hence no Appendix is included.

Dated:

Respectfully submitted,

By 

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APPENDIX A

Claims Involved in the Appeal of Application Serial No. 09/804,570

1. A call tone output system for a foldable portable telephone set having a hinge for being unfolded and folded, comprising:
 - a detector for detecting the unfolding and folding of the hinge; and
 - a tone output controller that causes tone output from a call tone output unit upon a call arrival when the hinge is in a folded state, and causes tone output from a receiver when the hinge is unfolded from the folded state.
2. A call tone output system for a foldable portable telephone set having a hinge for being unfolded and folded, comprising:
 - a detector for detecting the unfolding and folding of the hinge; and
 - a tone output controller that causes tone output from a call tone output unit upon a call arrival and causes tone output from a receiver when the hinge is unfolded from a folded state.
3. A call tone output system for a foldable portable telephone set having a hinge for being unfolded and folded, comprising:
 - a detector for detecting the unfolding and folding of the hinge; and
 - a tone output controller that causes tone output from a call tone output unit upon a call arrival, when the hinge is in a folded state, an unfolded state, or when the hinge is folded from the unfolded state, and that causes tone output from a receiver when the hinge is unfolded from the folded state.
4. A call tone output system for a foldable portable telephone set having a hinge for being unfolded and folded, comprising:
 - a detector for detecting the unfolding and folding of the hinge; and

a tone output controller that causes tone output from a call tone output unit upon a call arrival when the hinge is in a folded state, an unfolded state, or folded from the unfolded state and that causes tone output from a receiver when the hinge is unfolded from the folded state or when the hinge is folded from the unfolded state.

7. The call tone output system for a foldable portable telephone set according to claim 1, wherein the tone output controller causes tone output from the receiver at the time of the tone output from the call tone output unit.

8. The call tone output controller for a foldable portable telephone set according to claim 1, wherein the tone output controller causes tone output from the call tone output unit at the time of the tone output from the receiver.

10. A call tone output method for a foldable portable telephone set having a hinge to be unfolded and folded, comprising:

detecting the unfolding and folding of the hinge; and

outputting a call tone from a call tone output unit when a call arrives and the hinge is in a folded state; and

outputting a reception tone from a receiver when a call arrives and the hinge is unfolded from the folded state.

11. A portable telephone set having two member bodies capable of being unfolded and folded, comprising:

a detector for detecting the unfolding and folding of the two member bodies; and

a tone output controller that causes tone output from a call tone output unit upon a call arrival when the two member bodies are in a folded state, and that causes tone output from a receiver upon a call arrival when the two member bodies are unfolded from the folded state.

12. The portable telephone set according to claim 11, wherein the tone output controller causes tone output only from the call tone output unit when a call arrives in the unfolded state of the two member bodies.

13. The call tone output system for a foldable portable telephone set according to claim 3, wherein the tone output controller causes tone output from the receiver at the time of the tone output from the call tone output unit.

15. The call tone output controller for a foldable portable telephone set according to claim 4, wherein the tone output controller causes tone output from the call tone output unit at the time of the tone output from the receiver.